

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

V.

HIPOLITO BARRIENTOS-ARIZA,

Defendant.

NO. CR-06-6002-RHW

ORDER GRANTING MOTION TO DISMISS

Before the Court is Defendant's Motion to Dismiss (Ct. Rec. 19). Although a hearing is set to take place on February 27, 2006, the Government concurs with Defendant's motion without admitting the allegations contained therewith (Ct. Rec. 23). Defendant states and the Court concurs that his 2005 deportation proceedings did not comport with due process in that he was not advised of potential grounds for relief. *See United States v. Ortiz-Lopez*, 385 F.3d 1202, 1203-05 (9th Cir. 2004); *United States v. Arrieta*, 224 F.3d 1076, 1079 (9th Cir. 2000). Given this flaw, the present indictment must be dismissed. The Government's concurrence with Defendant's motion renders oral argument unnecessary.

Accordingly, IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss (Ct. Rec. 19) is **GRANTED**. The indictment in this case is dismissed with prejudice.

2. The motion hearing set for February 27, 2006, at 10:00 a.m., in Richland, Washington, is **stricken**.

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IT IS SO ORDERED. The District Court Executive is directed to enter this

1 Order, forward copies to counsel and the United States Marshal's Office, and **close**
2 **the file.**

3 **DATED** this 14th day of February, 2006.

4 s/ Robert H. Whaley

5 ROBERT H. WHALEY
6 Chief United States District Judge

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